

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

03 Cr. 581 (JGK)

- against -

DANIEL A. OJEIKERE,

MEMORANDUM OPINION
AND ORDER

Defendant.

JOHN G. KOELTL, United States District Judge:

The Court has entered an amended judgment in this case.

In drafting the judgment, the Court reduced the amount of restitution to \$679,132.82. At the hearing on June 22, 2007, the Court had announced an amount of \$679,732.82. That amount reflected a clerical or mathematical error because, when the victims and amounts announced at the sentencing hearing were added together, the proper total is \$679,132.82, an amount less than the total announced at the sentencing hearing. The Court has therefore corrected the error and included the proper amount in the Amended Judgment. See Fed. R. Crim. P. 36 ("Clerical Error").

The Court also corrected the date of the original imposition of sentence which was March 15, 2007, and not March 16, 2007, as noted in the Judgment dated April 26, 2007. Again, the Court has corrected this clerical error.

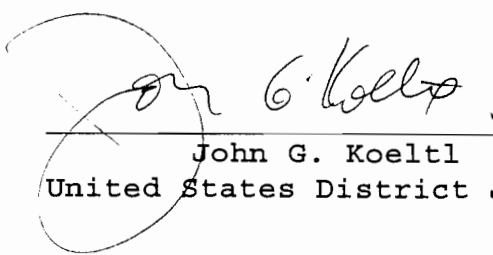
The Court also notes that the conduct of the restitution hearing and the entry of the supplemental judgment including the amount of restitution has been delayed in this case. While no party objected to the timing of the order of restitution, the Court notes that the statute provides that, if the victim's losses are not ascertainable by 10 days prior to sentencing, the Court shall set a date for the final determination of the victim's losses not to exceed 90 days after sentencing. See 18 U.S.C. § 3664(d)(5). At the original sentencing hearing, the Court fixed April 13, 2007 as the date for the Government to submit a list of proposed victims and amounts. The Court gave the defendant until April 27, 2007 to submit any response. The Government did make its submission on April 20, 2007, but on April 9, 2007 the defendant sought to have new counsel appointed. The Court appointed new counsel for the defendant on May 15, 2007 and extended the time for the defendant to make any response on the issue of restitution to June 1, 2007 and gave the Government until June 8, 2007 to submit a reply. The defendant did submit a response on May 30, 2007 and the Court held a hearing on June 22, 2007 at which time it announced the order of restitution. Given the period of time needed to appoint new counsel and to obtain the defendant's response to the Government's submission, the delay was reasonable.

Moreover, the defendant was not prejudiced by the delay. The Court accepted the only argument made by the defendant to reduce the amount of restitution. See United States v. Zakhary, 357 F.3d 186, 191-93 (2d Cir. 2004); United States v. Catoggio, 326 F.3d 323, 329-30 (2d Cir. 2003).

If the parties believe that the Court should do anything further on any of these issues or desire a conference to discuss them, any party should notify the Court by **July 9, 2007**.

SO ORDERED.

Dated: New York, New York
July 3, 2007



John G. Koeltl
United States District Judge